IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2225 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PM PANDEY

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2225 of 2004

MR CJ VIN for Petitioner No. 1

MR SP HASURKAR, AGP for Respondent No. 1,3

MR MK VAKHARIA for Respondent No. 2

MR PARESH UPADHYAY for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 16/02/2005

ORAL JUDGEMENT

Rule. Mr.Hasurkar, learned AGP waives service of

notice of rule on behalf of respondent Nos.1 & 3. Learned advocate Mr.Vakharia waives service of notice of rule on behalf of respondent No.2 and learned advocate Mr.Upadhyay waives service of rule on behalf of respondent No.4.

2. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

3. In the present petition, the petitioner has prayed for implementation of the order dated 21.11.03 passed by respondent No.1 i.e. Secretary, Urban Development and Urban Housing Department.

4. This case has a long history. However, briefly stated the grievance of the petitioner is his non-consideration for promotion to the post of Head Clerk and granting promotion to the said post to respondent No.4. It is the case of the petitioner that the said promotion is de hors the rules and the vacancy is wrongly treated as backlog vacancy reserved for Scheduled Caste candidate and that in reality the post should have been filled up from general category candidate by way of promotion. The resolution passed by the respondent No.2 dated 27.11.98 by which respondent No.4 was promoted to the said post came to be set aside by respondent No.1 by the order dated 21.11.03. In the said order dated 21.11.03, respondent No.1 found that respondent No.2 did not obtain necessary permission from the Collector under section 260 of the Gujarat Municipalities Act for treating the said vacancy as a backlog vacancy for Scheduled Caste candidate. Respondent No.1 also found that even for filling up the backlog vacancy, the experience required by the candidate to be eligible to seek promotion could have been reduced upto two-third of the requirements under the rules in case it is found that candidate having sufficient experience in the lower posts is not available whereas in the present case, respondent No.4 was promoted after the experience of only one year of service in the lower grade against the requirement of minimum of five years of service. Respondent No.1, therefore, in exercise of powers under section 264 of the Gujarat Municipalities Act, 1963 was pleased to set aside resolution No.20 of respondent No.2 dated 27.11.98.

5. This order though was not challenged by respondent No.4, was challenged by respondent No.2 Nagarpalika before this Court in Special Civil Application No.2153 of 2004. The said Special Civil Application came to be disposed of by an order dated

22.4.2004, a copy of which is made available by the counsel for the petitioner and the same is ordered to be taken on record. In the said order dated 22.4.04, this Court was pleased to notice that the Municipality i.e. respondent No.2 herein has already approached the Regional Director of Municipalities, Rajkot on 30th July 2003 seeking necessary approval. This appears to have been done to cure one of the defects noticed by respondent No.1 in the action of respondent No.2 regarding non-permission from the authorities to treat the vacancies as backlog vacancy for the Scheduled Caste candidate. This Court, therefore, disposed of the petition without making any observations on the merits, and required the Regional Director of Municipalities to take appropriate decision as early as possible. It is not in dispute that so far the said proceedings have not been disposed of and are still pending with the Regional Director of Municipalities, Rajkot.

6. In the meantime, one may also note that on 29.11.2003, respondent No.2 passed resolution No.104 by which it was resolved that respondent No.4 is discharging his duties efficiently and enthusiastically since five years. It was, therefore, resolved to continue his promotion till the issue is decided by the Court finally.

7. In view of this factual background, it is urged on behalf of the petitioner that the petitioner who is far senior to respondent No.4 is not being considered for promotion to the post of Head Clerk and the respondent No.4 in the guise of backlog reserved vacancy was promoted in a short span of one year from the lower post. It is also submitted that the resolution dated 27.11.98 by which respondent No.4 was promoted has already been set aside.

8. As noted earlier, the Regional Director of Municipalities was required to dispose of the proceedings initiated by respondent No.2 expeditiously as directed by this Court by the order dated 22.4.04. Much time has passed since this Court gave this direction and the proceedings are still not disposed of. In the meantime, respondent No.2 has despite its earlier resolution promoting respondent No.2 being set aside by the higher authorities has continued respondent No.4 on the promotional post. This cannot be permitted to be perpetuated indefinitely. The resolution dated 29.11.03 is also not in good taste, to say the least. If respondent No.2 had any dispute about the decision of respondent No.1, it was open for respondent No.2 to challenge the same in accordance with law. It was,

however, not open to respondent No.2 to take a unilateral decision that the decision of respondent No.1 shall be ignored till the finalization of the legal proceedings. In view of this situation, the question of legality of the action of respondent No.2 must be concluded expeditiously. It will be open for respondent No.2 to pursue its application before the Regional Director of Municipalities which has been referred to in the order dated 22.4.04 passed in Special Civil Application No.2153 of 2004. If no order is passed by the said authority permitting respondent No.2 to treat the vacancy of Head Clerk as backlog vacancy for Scheduled Caste within a period of four months from today, respondent No.2 shall implement the order dated 21.11.03 passed by respondent No.1 and take consequential steps for filling up the post of Head Clerk in accordance with rules. In view of the fact that respondent No.4 has continued on the said position since long, his position is not being disturbed at this stage though the order under which he came to be promoted has been set aside by respondent No.1 by order dated 21.11.03. It is clarified that if within the above period of four months no permission is obtained by respondent No.2 from the Regional Director of Municipalities to treat the vacancy in question as backlog vacancy for Scheduled Caste candidate, respondent No.2 shall implement the order dated 21.11.03 without any further delay. If the petitioner makes a representation to the Regional Director of Municipalities within a period of one week from today, I am sure the said authority will take into consideration the same while passing appropriate orders.

9. With the above directions, the petition is allowed to the above extent. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)
(vjn)